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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts

DTE 98-57

SURREBUTTAL TESTIMONY OF WILLIAM CARMODY

ON BEHALF OF

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

November 5, 1999

Q. PLEASE STATE YOUR NAME, PRESENT POSITION AND BUSINESS ADDRESS.

A. My name is William Carmody. I am the District Manager responsible for OSS Negotiations. My address is 32 Avenue of the Americas, New York, NY.

Q. ARE YOU THE SAME WILLIAM CARMODY WHO FILED DIRECT TESTIMONY IN THIS PROCEEDING DATED JULY 26, 1999?

A. Yes.

Q. ON WHOSE BEHALF ARE YOU FILING THIS TESTIMONY?

A. I am filing this surrebuttal testimony on behalf of AT&T Communications of New England, Inc. and its affiliates (collectively "AT&T").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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A. The purpose of my testimony is to explain why the Department of Telecommunications and Energy (the "Department" or "DTE") should require Bell Atlantic-Massachusetts ("BA-MA") either to file promptly tariff rates, terms and conditions for the Unbundled Network Elements Platform ("UNE-P"), or to participate in Department supervised meetings with CLECs to develop the generally available terms and conditions of UNE-P. The ability to purchase and offer service using UNE-P is crucial to CLECs' ability to compete in the local exchange market in Massachusetts. BA-MA has repeatedly resisted providing UNE-P to CLECs and is once again seeking to hinder and delay CLEC's ability to obtain UNE-P by refusing to file a tariff making it generally available. While BA-MA has instead offered to make UNE-P available under the terms of negotiated interconnection agreements, such a proposal is problematic because individual interconnection agreements lack the necessary detail for a meaningful offering and would thus require further negotiation to establish the business rules necessary to implement their UNE-P provisions. BA-MA should not be permitted to delay any longer, and the Department should require BA-MA promptly to identify generally available terms and conditions, as well as business rules, for UNE-P. If the identification of terms, conditions and rules necessary to offer UNE-P is not going to be accomplished in a Department supervised implementation of the interconnection agreements (such as a collaborative), it should be done in this tariff proceeding.

Q. DOES TARIFF NO. 17 CONTAIN TERMS AND CONDITIONS FOR UNE-P?

A. No, it does not. It is my understanding that the Department ordered BA-MA to provide CLECs with UNE-P and other UNE combinations before BA-MA submitted a version of Tariff No. 17 in April 1999. Despite the Department's Orders requiring that Bell Atlantic make UNE-P and other existing UNE combinations available to CLECs, however, BA-MA did not include a UNE-P offering in the tariff. It is my understanding that at the outset of this proceeding in or about April 1999, AT&T requested that Bell Atlantic propose such tariff provisions, but that Bell Atlantic refused to do so, stating that it intended to separately tariff UNE-P. With that understanding, this docket went forward without UNE-P. Bell Atlantic, however, has never proposed any tariff that would flesh out the details of how CLECs may obtain non-discriminatory access to such combinations.

Q. WHAT HAS CHANGED THAT MAKES IT IMPORTANT FOR THE DEPARTMENT TO REVISIT UNE-P IN THIS DOCKET?

A. The Department should revisit UNE-P because BA-MA continues to change its position in an effort to delay making UNE-P available to CLECs. BA-MA recently reneged on its earlier promise to tariff UNE-P separately. I understand that in early October 1999 in another proceeding, Bell Atlantic stated that it intended to provide CLECs with UNE-P and other existing UNE combinations in accordance with existing interconnection agreements ("ICAs"), and not to file a UNE-P tariff. I now understand that in response to an information request filed in late October in the proceeding on BA-MA's petition under section 271, that BA-MA has reversed course again, and indicated its intention to tariff UNE-P (and to include it in Tariff No. 17), but only after the FCC issues its remand order on UNEs. It thus appears that BA-MA may expect CLECs to wait until after the FCC order for a UNE-P offering, unless BA-MA's proposal to make UNE-P available under interconnection agreements still holds.

But proposing to offer UNE-P under existing interconnection agreements is not a meaningful suggestion, at least not without Department supervision. Existing ICAs do not spell out the procedures and business rules for the provisioning of UNE-P and other combinations in sufficient detail for CLECs to understand the terms and conditions on which BA-MA proposes to offer UNE-P. CLECs therefore cannot create business plans or market to customers based on BA-MA's vague commitment. Each CLEC would need to discuss at length with BA-MA the details of BA-MA's willingness to offer UNE-P, which will create further delays in its availability, especially since BA-MA has no incentive to offer UNE-P to CLECs who want to compete with it.

BA-MA has an obligation to offer UNE-P now. This tariff docket provides an

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opportunity for the Department to ensure that BA-MA offers generally available rates, terms and conditions for UNE-P.

Q. PLEASE EXPLAIN WHY IT IS IMPORTANT THAT BA-MA BE REQUIRED PROMPTLY TO OFFER GENERALLY AVAILABLE TERMS AND CONDITIONS FOR UNE-P?

A. The ability to purchase UNE-P is crucial to a CLEC's ability to compete on a broad scale in the Massachusetts local exchange market. Again, it is my understanding that the Department ordered BA-MA months ago to make UNE-P available to CLECs. BA-MA's refusal now to file a tariff for UNE-P, after representing to the Department months ago that it would file such a tariff, and instead only to provide UNE-P under individual interconnection agreements, represents another attempt by BA-MA to hinder and delay competition in Massachusetts.

BA-MA has no incentive quickly to negotiate the provisions necessary for a meaningful UNE-P offering that are missing from existing interconnection agreements, or to negotiate new agreements on UNE-P. BA-MA will have even less incentive to complete such negotiations if its petition under section 271 is approved and it is allowed to enter the long distance market. Because BA-MA has no incentive to make UNE-P available, and can delay its availability in negotiating the terms of interconnection agreements, BA-MA must be ordered to provide terms for UNE-P that makes the service generally available to any CLEC that wishes to compete in Massachusetts.

Such terms should be the baseline offer for CLECs to use to enter the local exchange market. Whether it be by tariff or through Department supervised meetings with CLECs to work out the necessary terms under interconnection agreements, Department oversight is necessary to make UNE-P a commercial reality.

Q. WHAT ARE THE BASIC REQUIREMENTS THAT SUCH GENERALLY AVAILABLE TERMS SHOULD MEET TO ENABLE CLECS TO USE IT TO COMPETE IN MASSACHUSETTS?

A. First, the offering must state with specificity the terms and conditions under which UNE-P is available, in order to permit CLECs to understand how BA-MA is offering UNE-P in Massachusetts, and to permit the Department to ensure that BA-MA is complying with its orders concerning UNE-P. For example, if there are Operation Support Systems ("OSS") requirements for ordering, maintenance and billing with respect to UNE-P, these should be clearly defined.

Next, the offering must, of course, identify the rates that BA will charge for UNE-P. It is my understanding that BA-MA is supposed to file with the Department revised non-recurring charges for UNE combinations and UNE-P in a compliance filing due next week. After other parties have had an opportunity to comment on BA-MA's filing to ensure the charges are being properly applied, the Department should act quickly to enter a final order on such charges. At the same time, BA-MA should be required to identify how it intends to apply recurring charges for UNE-P. CLECs must know with certainty the costs they will incur in order to analyze how they can successfully compete and build a business model before entering the market.

Q. ARE THERE ANY OTHER ITEMS THE GENERAL UNE-P OFFERING SHOULD INCLUDE IN ORDER FOR CLECS TO BE ABLE TO USE IT TO COMPETE IN THE LOCAL MARKET IN MASSACHUSETTS?

A. Yes. The offering should specify what features and functions BA-MA includes with UNE-P. In addition to an understanding of the costs, a set of features is necessary so that CLECs can craft a marketing offer to end user customers. BA-MA should also be required to make clear in the offering what optional services are available in addition to the basic UNE-P offering, such as Operator Services and Directory Assistance, voice messaging, and other services. CLECs should be able to choose additional services or features if they wish to enhance their base offering to compete for high-end customers.

In addition, the general offering must specify the intervals for ordering and provisioning of UNE-P. CLECs must have this information to understand the time

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frames to provide service to their customers.

Q. HOW DO YOU RECOMMEND THE DEPARTMENT ORDER BA-MA TO DEVELOP PROMPTLY A GENERAL UNE-P OFFERING?

A. BA-MA should be directed to file promptly a UNE-P tariff that may be reviewed on an expedited track in another proceeding. A second option would be Department supervised meetings with CLECs, in which BA-MA would identify the general terms and conditions it proposes and CLECs could propose modifications, with the Department resolving disputed issues. Whatever the mechanism, BA-MA should be required to develop general terms by which CLECs may finally obtain UNE-P. Such terms and conditions should also be developed in advance of any OSS testing related to BA-MA's section 271 petition, since the ability of BA-MA to provide UNE-P at parity is vital to fostering meaningful competition in the local exchange market in Massachusetts.

Q. DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes.